K 1946

File No. C Workmens cmpn./46

Legal Department

A **BRANCH**

(p/12/ L

Subject:—

Workmens' Compensation Ac-

opinions under th

File No. C Workmens cmpn 1/46

Gen. 194

165-A

K

CONTENTS.

Legal Department File No.O.Workmen's Compn./~~1946~~ 1946.

Sr. No.	R.I. / O.No.	Subject.	Pages.
		Workmen's Compensation Act, 1923.	
1.	718. 26-1-46	Whether labourer, Kaka Bala, though a piece worker, would fall within the meaning of the term 'workmen' under the Act.	1-5
2.	1855 6-3-46	Section 3 — Whether the driver can be prosecuted for rash and negligent diiving. ...	7-
3.	~~Section~~ 420 14-1-47	Section 13 — Whether the claim of Government to be indemnified under the above section can be enforced against the Kolhapur Bus 'ssociation. ...	9-10.

MR 9/6

MRP. 6/6/56.

K.S.R. 9/6

Office of the R.L.A.

In his note the Chief Accounts Officer, F.D.(Supply) states:-

"In the Govt. Godowns grain bags have to be loaded and unloaded to and from the trucks and are also required to be opened, cleaned and stacked. For these operations the Food Controller has entered into an arrangement with the various gangs of labourers who are represented by several mucadams. Certain rates have been approved by Government on a piece-work basis (at so many rupees per 100 bags handled) and the labourers are paid on the basis of the piece-work or out-turn through their respective mucadams. A detailed account of the out-turn under the various heads of work is kept and at the end of the month, bills for payment according to the out-turn of work are made in the names of mucadams, who receive payment and distribute the same to the piece-workers engaged by them.

One labourer, named Kak Bala, was injured in the course of his employment in the Civil Supplies Godowns and Government sanctioned a compensation of Rs.30/- to be paid to him through Government Labour Welfare Officer. The office of the Chief Accounts Officer, F.D. (Supply) raised a question whether the labourer, Kaka Bala, was a Government servant. The Food Controller's Office states thus:-

> 'Kaka Bala is one of the labourers employed at the Civil Supplies Godowns <u>through the agency of mucadams</u> who are approved by the Food Controller. The labourer is paid on the basis of the actual out-turn of work and not on the basis of monthly salary. It, therefore, seems that he cannot be called a Government servant as such in the technical sense of the term etc.' "

The R.L.A. who was consulted in the matter, however, observes thus:-

"On inquiry being made with the Labour Welfare Officer, Mr. Telang, it is ascertained that the mucadam who brings in labour in the Government Godown for work, <u>is not a contractor at all. He does not enter into any contract with Government to</u> undertake any work or a specific piece of work for a stipulated lump sum. <u>His duty is only that of supervising the work of labour brought in by him and to distribute to them the money in</u> the shape of wages payable to them for their piece-work. <u>The labour is under the control of the L.W.O. and cannot leave work without his permission;</u> that is, labour is indirectly under the control of Government <u>and is being paid for by Government.</u> Government employees this labour for their specific business or work and labourers thus become Government employees, etc."

The Chief

The Chief Accounts Officer is, however, of opinion that the labourer is not a Government employee and the compensation if paid should be recovered from the mucadam as a contractor.

In view of the difference of opinion between the Chief Accounts Officer and the Labour Welfare Officer the R.L.A.'s opinion is sought on the following points, namely:-

(1) Whether labourer, Kaka Bala, though a piece-worker, would fall within the meaning of the term "workman" under the Workmen's Compensation Act, 1923, as amended by Act XIII of 1939;

(2) Whether he is a Government employee; and

(3) If compensation is payable by Government, whether under section 12 of the Workmen's Compensation Act, 1923, Government is entitled to recoup the same from the mucadam as contractor.

2. Anent the first question, the term "workman" as defined in clause (n) of section 2 of the Workmen's Compensation Act, 1923, means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is --

(i) x x x x x

(ii) employed on monthly wages not exceeding three hundred rupees, x in any such capacity as is specified in Schedule II,

whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied. The words in the parenthesis contemplate that in order to be excluded from the benefit of the Act, the workman --

(a) must have employment of a casual nature,
(b) be employed otherwise than for the purposes of the employer's trade or business.

Whether

Whether employment of Kaka Bala is of a casual nature is a question of fact which would depend upon circumstances of the case. It is, however, obvious that he was employed for the purposes of the employer's trade or business. It is not stated that the employment of Kaka Bala was of a casual nature. If a man was employed for the purposes of trade or business of an employer, the employer was liable for compensatim even through the employment was of a casual nature (cf. I.L.R. 11 Rang. 433; I.L.R. 58 Mad. 804). This view is also followed in the Khulna Electric Supply Corporation Ltd. vs. Bahadur Sardar, 42 C.W.N.p. 516). The definition of "workman" in section 2(1) clause (n) is not limited to workmen who are employed by the month, but would also include workmen employed by the day, by the week or by the year (See 1938 Bom.44). Moreover, Kaka Bala was employed in the handling of goods within the precincts of Government godowns in which ten or more persons have been so employed and his case would fall within the scope of clause (xxvi) in Schedule II to the Act. It is no doubt true that the labourers are paid daily wages on the out-turn. But section 5 of the Workmen's Compensation Act, 1923, as amended by Act XIII of 1939, provides that "in this Act and for the purposes thereof the expression 'monthly wages' means the amount of wages deemed to be payable for a month's service (whether the wages are payable by month or by whatever other period or at piece rates), and calculated in the matter specified in clauses (a), (b) and (c). In view of this amendment Kaka Bala, though paid on the basis of

piece-

piece-work, would be deemed to be employed on monthly wages within the meaning of section 2(n)(of the Act, and would, therefore, be entitled to claim compensation under section 3 of the Act in respect of injuries sustained by him.

3. Adverting to the second question, it may be stated that the relation of master and servant arises out of an agreement or contract of service between persons. The agreement may be express or implied and by it the person called the 'servant' becomes bound to obey the lawful orders and to be under the control of the other person called 'the master'. The power of control is essential to constitute the relationship of master and servant. "There is no better working rule for determining the question than that laid down by Blackburn J. in R. V. Negus (1873) 2 C.C.R. at p.37, namely, that the test is whether the alleged servant is under the control and bound to obey the orders of the alleged master" (Hill v.Beckett, (1915) I.K.B.§78 at 582). If all the elements, namely:- (a)power to appoint (b) power to dismiss, (c) liability to pay wages - be present and there is no question of agency, that is conclusive proof of the relationship of master and servant (Macdonell on Master and Servant). In his note, L.A. clearly states that "The labourer is under the control of the L.W.O. and cannot leave work without his permission; that is labour is indirectly under the control of the Government and is being paid for by Government. Government employes this labour for their specific business or work etc." It is, therefore, clear beyond ~~a~~ doubt that when the labourers are employed and paid by Government and are under the control of Government, they will be

Government

Government servants (cf. R.L.A's No.7997 dated 2-10-1942).

4. Adverting to the third question, the test laid down to distinguish between an independent contractor and a servant is whether or not the employer retains the power not only of directing what work is to be done but also of controlling and directing the manner of doing the work (cf. Hower v. Hall (1881) 6 Q.B.D.333). Wood in his Master and Servant thus distinguishes the two relations - "When a person lets out work to anothe to be done by him, such person to furnish the labour, and the contractee reserving no control over the work or workmen, the relation of contractor and contractee exists, and not that of Master and servant". The R.L.A., however, states that "The mucadam who brings in labour in the Government godown for work is not a contractor at all. He does not enter into any contract with Government to undertake any work or a specific piece of work for a stipulated lump sum. His duty is only that of supervising the work of the labour brought by him, and to distribute to them money in the shape ofwages payable to them for their piece work." Thus there can be no presumption of a contract for hire of labour between the mucadam and Government, nor that of an independent contractor.

As regards the question of indemnity under section 12(2), attetion is invited to following pertinent observations of Derbyshire C.J. in M/s. S. Kaloo and Sons vs. Ofatannessa Bibi, 42 C.W.N. p.803 at 806:-

> "It is to be noted that the contract is one with any other person (referred to as the Contractor) for the execution by or under the

contractor

> contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal. If the principal wishes to establish a right to indemnity against a contractor or a person who alleges against a contractor or a person who alleges to be a contractor within the meaning of the section, he must prove that the person is a contractor as contemplated and laid down in the section. That lays down that a contractor is one who contracts for the execution of the whole or any part of the work. There is no evidence here that Insan Sirdar contracted with M/s. S. Kaloo and Sons for the whole or any part of the work. The evidence is that Insan on request by M/s. S.Kaloo and Sons brought so many men and that Kaloo and Sons paid Insan so much per head for each man he brought. There is no evidence that Insan contracted to do the whole or any part of the work. What Insan did was to supply labour at so much per head, to Kaloo and Sons. He may have been, in the popular sense of the word, a labour contractor, but he was not a contractor within the meaning of section 12(1) of the Act for the whole or any part of the work."

The above observations apply with equal force to the facts of the present case. Mucadams at the most may be said to supply labour, but they cannot be said to be contractors within the meaning of section 12(1) of the Act for the whole or part of any work. That being so, Government will not be entitled to any indenity in respect of compensation they are liable to pay to the workman.

Sd. R.T.Katarki

for Remembrancer of Legal Affairs.

U.R.to Chief Accounts Officer,F.D.(S),
No.718, dated the 26th January 1946.

MRP.
6/6/56.

Office of the R.L.A.

Under section 13 of the Workmen's Compensation Act, 1923, the Bombay Government can claim to be indemnified by the D.A.D.Claims, War Department only if it can be proved that the driver did not show reasonable care and that the deceased was not guilty of any contributory negligence. In the letter from the D.A.D.Claims, H.Q. 108 L. of C. Area c/o 13 A.B.P.O. at page 9 ante it is stated:-

> "this Accident has been carefully investigated and from all the evidence in my possession it is apparent that the sole responsibility for the accident rests with the deceased Bai Aiali Ramji and no blame can be attached to the driver of the military truck."

If the aforesaid statement is correct, the Bombay Government would not be entitled to be indemnified by the D.A.D.Claims, War Department under section 13 of the Workmen's Compensation Act. There are no materials before the R.L.A. to test the veracity of the statement; but the fact that the driver was not prosecuted for rash and negligent driving lends support to the truth of that statement.

Sd. P.N.Moos
5/3/46
Remembrancer of Legal Affairs.

U.R.to P.W.D.,No.1855, dated 6-3-1946.

MRP.
6/6/56.

L.D.
R.I.No.10189,dt.16-11-1946.

Submitted.

2. It appears that a motor accident which occurred in January 1943 in the Belgaum Division resulted in the death of a P.W.D. cooly and injury to another cooly. The amounts of compensation payable to the heirs of the deceased coolie came to Rs.530/- and Rs.38/- respectively. These amounts were deposited by the P.W.D. on 20-6-1944 with the Commissioner for Workmen's compensation who has already disbursed the amounts to the claimants. The motor bus belonging to the Kolhapur Bus Association was it appears insured with the British General Insurance Co. against third party risks for the period 9th April 1942 to 9th April 1943. The Association wrote to the Insurance Coy. to pay the amount direct to the Commissioner of Workmen's Compensation but the amount has not yet been paid; The insurance policy which was called for by Government appears to have been lost by Government. The P.W.D. referred the papers to the Commissioner for advice whether the recovery of the amount is time-barred and can be made in the absence of the insurance policy. The Commissioner of Workmen's Compensation states that the limitation period will be either that stated in article 83 or articles 120 of the Indian Limitation Act. The question for the consideration of the R.L.A. is what is the period of limitation for recovery of the amount of compensation from the Kolhapur Bus Association.

x x x x x x

MRP.
6/6/56.

Sd. P.S.Nadkarni
21/12.

Office of the R.L.A.

The claim of Government tc be indemnified under section 13 of the Workmen's Compensation Act, 1923 is in time (see article 149 of the first schedule to the Indian Limitation Act, 1908) and it can be enforced against the Kolhapur Bus Association, it being unaffected by the loss of the Insurance policy.

Sd. D.V.Vyas
Remembrancer of Legal Affairs.

U.R.to P.W.D.,No.420, dated the 14th January 1947.

MRP.
6/6/56.